

Children's right to contact with their incarcerated parent: chapter 5 of the report to the German Federal Parliament on the development of the human rights situation in Germany, July 2016 - June 2017

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Veröffentlichungsversion / Published Version
Sonstiges / other

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:
Deutsches Institut für Menschenrechte

Empfohlene Zitierung / Suggested Citation:

Kittel, C. (2018). *Children's right to contact with their incarcerated parent: chapter 5 of the report to the German Federal Parliament on the development of the human rights situation in Germany, July 2016 - June 2017*. Berlin: Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Kinderrechtskonvention. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-57823-6>

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German Institute
for Human Rights

National CRC Monitoring Mechanism

Children's Right to Contact with their Incarcerated Parent

Chapter 5 of the Report to the German
Federal Parliament on the Development of
the Human Rights Situation in Germany

July 2016 – June 2017

About the report

Development of the human rights situation in Germany July 2016 – June 2017

Report to the German Federal Parliament in accordance with sec. 2 para. 5 of the Act regarding the Legal Status and Mandate of the German Institute for Human Rights

The German Institute for Human Rights annually submits a report on the development of the human rights situation in Germany to the German Federal Parliament (in accordance with sec. 2 para. 5 of the Act regarding the Legal Status and Mandate of the German Institute for Human Rights of 16 July 2015; short: DIMRG). The report is presented on the occasion of the International Human Rights Day on 10 December. The DIMRG provides that the German Federal Parliament officially responds to the report. The second report 2016/2017 covers the period 1 July 2016 to 30 June 2017. Future reports will cover the period 1 July to 30 June of each subsequent year.

With regard to the requirement of an annual report on the human rights situation in Germany, the Federal Parliament and the Federal Council emphasised: It is a permanent and continuing task of public authorities to respect and realise human rights of all people in Germany. For that reason, the German Constitution demands a regular review of the effects laws can have on human rights and, if necessary, readjust by means of law making or by changing administrative measures. In addition, new challenges to human rights can emerge – including through political and societal change, international or domestic developments or scientific and technological progress. Such challenges need to be recognised, and solutions in accordance with human rights need to be developed. This report and its future editions intend to contribute to both, human rights impact assessments of laws as well as the identification of new human rights challenges.

The report is available at:
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About the chapter “Children’s Right to Contact with their Incarcerated Parent”

A parent held in custody has a serious impact on a child's well-being. It violates the right of the child to direct contact with their parents according to art. 9 UN Convention on the Rights of the Child (CRC). The Convention also calls for ensuring the primacy of the child's best interests if the State intervenes – for example, through arrest – in the relationship between children and parents (art. 3 CRC). The National Monitoring Mechanism for the CRC has investigated the existing regulations on children visiting a parent taken into custody, and analyzed the penal law in the federal states. Additionally, the ministries of justice provided information through a questionnaire on relevant regulations. The analysis shows: The possibilities for children to visit their parents kept in prison vary considerably across Germany.

The following text is the English translation of the fifth chapter, entitled “Das Recht von Kindern auf Kontakt zu ihrem inhaftierten Elternteil”, of the report “Entwicklung der Menschenrechtssituation in Deutschland. Juli 2016 – Juni 2017. Bericht an den Deutschen Bundestag gemäß § 2 Absatz 5 DIMRG”.

Children's Right to Contact with their Incarcerated Parent

The incarceration of a parent has a powerful impact on the life of a child. It changes the relationships within the family and has consequences for the child's social environment. It has been estimated that on any given day circa 100,000¹ children in Germany have a parent² who is in prison. No official statistics on this exist.

The situation of children with an incarcerated parent is a particularly difficult one. The well-being of these children is at a greater than average risk, a comparative international study conducted in 2012 has shown. Children with a parent in prison face a significantly greater risk of developing mental health problems than children in the general population, and the social consequences of their situation cause them a great deal of distress.³ From an attachment theory perspective, the incarceration and associated "loss"⁴ of a parent is characterised as a time of trauma for the children concerned.⁵ Typically, a child whose parent is in prison is allowed to have only a very limited amount of direct contact with that parent – one face-to-face visit per month, for instance, and even then the contact only lasts a few hours and takes place under conditions not designed with children's needs in mind. Depending on their age, children can find it difficult to understand why, suddenly, they can only see their parent – who may have been reading them bedtime stories only recently – in the presence of a prison official and, as is sometimes the case, why they are not even allowed to touch their mother or father.

How have Germany's governments responded to the specific situation of children who have a par-

ent in prison, particularly with respect to prison visiting rules? This was the question at the core of the present study of the National CRC Monitoring Mechanism of the German Institute for Human Rights. To answer this question, the National CRC Monitoring Mechanism analysed the prison legislation (*Justizvollzugsgesetze/Strafvollzugsgesetze*) of all of Germany's federal states (Länder) and collected information with a questionnaire from the Länder justice ministries about the rules pertaining to the interaction between prisoners and their children and about the conditions under which visits take place. This chapter begins by describing what the incarceration of a parent, and the separation it entails, means for children. It then turns to the rules and practices relating to contact between incarcerated parents and children in Germany, discussing them in the light of the requirements arising from the UN Convention on the Rights of the Child – particularly those relating to children's right to interact with both parents, arising from article 9 of the Convention.

1 When children's lives are altered by the incarceration of a parent

Taken as a group, studies analysing the effects of parental incarceration on children are of recent date. However, research confirming the important role played by family contacts during a term of imprisonment has been available for some time. The earliest of these studies focused on the incar-

1 Cited in Bieganski / Starke / Urban (2013), p. 4.

2 In the case of children in Germany, the incarcerated parent is usually the father. Women make up only about five percent of the prison population in Germany, (Federal Statistical Office / *Statistisches Bundesamt* (2017), p. 15).

3 Jones et al. (2013).

4 This also termed "ambiguous loss." This concept describes the burden caused by the loss of a parent. While the parent is still emotionally part of the family for the child, de facto he or she is not physically present—be it due to incarceration, separation, or other external circumstances. Also see Boss (2000).

5 Bocknek / Sanderson / Britner (2009), pp. 323–333

cerated persons themselves⁶, while later studies centred around their spouses.⁷ More recent studies have looked at the family as a whole, and thus at children too. The first studies in this latter group collected information about effects on children by interviewing the parent acting as caregiver. In one study representative for the German-speaking region, for example, the wives of prisoners reported increases in aggressive behaviours in their children and a drop in their school performance.⁸

The effects of parental incarceration on children as a subject of research has been drawing more attention in Europe in the years since 2001.⁹ A trailblazing study in this area was the COPING project (2010–2012), an international study conducted with EU funding.¹⁰ The COPING project marked the first time that data of this kind had been collected, including for Germany. The results of the COPING surveys provided initial confirmation for the effects of parental incarceration posited in attachment theory, described above. The risks for the healthy development of children with an incarcerated parent, the study found, are indeed greater than average: the children who had a parent in prison who took part in the study were at a significantly elevated risk of developing mental health problems and suffered a great deal from the social consequences of their situation.¹¹ Fundamentally new in the design of the COPING study was the fact that participating children and their families were asked directly about what helped them to cope with their stressful situation and to deal better with its difficulties.¹²

The recommendations issued by the COPING project researchers emphasise the particular importance of maintaining direct contacts (physical and interactive) between the incarcerated adult and the child.¹³ This is borne out by the responses of the children in the German survey population, who cited direct contact as being helpful more often than anything else.¹⁴

The COPING study's findings were later used to formulate recommendations for child-sensitive penal system policies, particularly by independent organisations that were already offering programmes for children with incarcerated parents.¹⁵ In 2012, two of these, the Bundesarbeitsgemeinschaft Straffälligenhilfe e. V. (BAG-S e. V.: National Alliance for the Care and Resettlement of Offenders) and the Deutscher Caritasverband (German Caritas Association) held an expert discussion on the issue,¹⁶ in which members of the Children's Commission of the German Bundestag participated, and presented in that context their recommendations for a family-sensitive penal system.¹⁷

2 UN CRC requirements

The UN Convention on the Rights of the Child entered into force in Germany on 5 April 1992 and has been in effect without reservation since July 2010. Thus Germany has committed itself to fulfil, respect and promote all of the rights of the child recognised in the UN CRC on German territory. Strengthening children's rights and their position as legal subjects lies at the core of the UN CRC.

6 Glueck / Glueck (1937).

7 Morris (1967).

8 Busch / Fülbier / Meyer (1987); Busch (1989).

9 Cunningham (2001).

10 Jones et al. (2013).

11 Vollhase / Wichmann (20130).

12 Jones et al. (2013), pp. 32, 47. The study began in 2010 and ran three years until December 2012. Particular emphasis was placed on a child-centred procedure. For the German part of the study, questionnaires collected data from 145 children aged 7–17, of whom 47 percent were female, interviews were also conducted with 27 children (17 female and 10 male) aged 7–18.

13 Jones et al. (2013), pp. 88, 99–103.

14 Bieganski / Starke / Urban (2013), p. 9.

15 See Bieganski / Starke / Urban (2013), p. 9.

16 Event title: "Mehr Familie wagen – für ein besseres Leben von Kindern Inhaftierter"

17 The documentation from the expert discussion was published in the BAG-S Informationsdienst Straffälligenhilfe, 3/2012: Bundesarbeitsgemeinschaft für Straffälligenhilfe (2012).

The Convention's seeks to have children be placed in a position from which they can assert their human rights against state bodies, rather than only being seen theoretically as holders of human rights.

This understanding – that children have the full scope of human rights and are also entitled to

demand them – is reflected in the four fundamental principles of the UN CRC: the prohibition of discrimination (article 2); the best interests of the child as a primary consideration ((article 3); the right of the child to life and the best possible development (article 6); and the right of the child to have her or his views heard in all matters affecting her or him.

Alternatives to incarceration for parents, so children are not punished along with them

The need to consider the children of incarcerated persons was the subject of recommendations issued by UN Committee on the Rights of the Child to all State Parties as early as in 2011. Advocating a fundamental change of mindset, the Committee on the Rights of the Child recommended that states improve their prison visits policies and change the environment within which visits take place (framework conditions), gearing both towards the needs of the children involved. The Committee also proposed that states test and develop alternatives to incarceration and detention for use in cases when children would be affected by a parent's imprisonment.¹⁸ The Committee urged states to ensure that the best interests of the child are also a primary consideration during sentencing. It also recommended that states think about ways to facilitate interaction, ranging from a change to more liberal visiting policies, to improving the arrangements for face to face contact (framework conditions of visits), to the creation of new possibilities for temporary release (home leave).¹⁹

A look at other European countries reveals that the implementation of these proposals is entirely feasible. Pension Engelsborg, for instance, is a family facility near Copenhagen that has operated since 2005. This facility lets prisoners spend the final part of their prison term living with their families in a kind of "supported living group". Pension Engelsborg's mission is to concentrate on the children's needs while also helping the other family members to improve their relationships with one another.²⁰ There have increasingly been calls – many coming from within the federations of prisoners' aid societies in Germany – for alternatives to custodial sentences and to change the conditions of imprisonment in order to avoid or curb harmful effects on family members.²¹

When the German Prisons Act (*Strafvollzugsgesetz*) was being drafted in 1977, similar concerns about children's well-being in the minds of German lawmakers led the Bundestag to create the possibility for children who have not reached school age to live with their incarcerated mothers in special facilities – if this is in the child's best interests.²²

From a children's rights perspective, the serious consideration of alternatives to incarceration is desirable: This should entail a more rigorous examination as to whether suspended sentences might be an option, as well as the taking of child's best interests into consideration when deciding between fines and custodial sentences. A crucial point here is that alternatives to incarceration would be considered not only in the case of mothers, but when the offenders are fathers.²³

18 UN Committee on the Rights of the Child (2011), para. 30.

19 Ibid.

20 Bundesarbeitsgemeinschaft für Straffälligenhilfe e. V. (BAG-S) & Chance e. V. Münster & Der Paritätische Landesverband NRW e. V. (2014)

21 Kawamura-Reindl (2016), p. 26

22 Prison Act of 01 Jan. 1977 (StVollzG, Strafvollzugsgesetz), §§ 80, 142. Under these provisions, a child not yet of school age live with her or his incarcerated mother if this is in line with the child's best interests. The act provides for separate facilities to be set up for this purpose.

23 In view of the fact that studies have shown that the relationship between fathers and children equally significant: Grossmann / Grossmann (2002); Suess et al (2001); Lamb (1980)

Under article 9(3) of the UN Convention on the Rights of the Child, children have the right to maintain personal relations and direct contact with both of their parents on a regular basis. Germany's Federal Constitutional Court has also decided that the right to contact between a parent and child is not solely a parental right, but that a separate right on the part of the child to have contact with her or his parents arises from Article 6(2) of the Basic Law (Grundgesetz, the German Constitution), in conjunction with the child's right to protection of her or his personality under Article 2(1) and Article 1(1)). In the Federal Constitutional Court's view, a child's personal relationship with her or his parents and their care, help and affection contribute significantly towards the child's ability to develop into a person who knows that she or he is respected and learns to respect both herself or himself and others. The Court also stresses that parents owe it to their child to be guided by the best interests of the child and that children have a right to expect their parents to care first and foremost for them.²⁴

The right to direct personal contact must also be taken into account in when structuring the conditions of children's visits with an incarcerated parent. In weighing this right against the interests of executing penal sanctions, the principle of the child's best interests also applies, i.e. the child's best interests should be a primary consideration in all decisions on matters affecting the child (article 3(1) of the UN CRC). Until now, neither the judiciary nor the public child and youth services have taken the effects that the incarceration of a parent has on the children involved explicitly into account, and particularly not as a primary consideration.

Although the Child and Youth Welfare Act's (*Kinder- und Jugendhilfegesetz*) catalogue of services (§ 2 of Book 8 of the Code of Social Law (SGB VIII)) includes many services and forms of assistance which could be used to address the typical needs and problems of children of incarcerated parents, in practice these services are not actively targeted

at this particular group. The existence of a general need for assistance is denied. In 2011 (before the release of the results of the COPING study), the Federal Government, for instance, argued that parental incarceration did alone not constitute grounds for a claim to child and youth services.²⁵ It is the view of the National CRC Monitoring Mechanism that this position cannot be sustained in this form, in light of the unequivocal results from the COPING study and those of the first evaluations of support programmes designed for the children of incarcerated parents.²⁶

3 Opportunities for contact and visits in prisons: differences across Germany

For the present report, the National CRC Monitoring Mechanism investigated the statutory provisions of relevance to opportunities for contact between children and an incarcerated parent. The binding requirements of the UN CRC formed the starting point for the analysis: the Convention explicitly speaks of the right of a child "who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" (article 9(3) of the UN CRC). Regular interaction with the imprisoned parent and how it takes place is of great significance, as the German sample of the COPING study demonstrated: the children themselves identified this as a key factor that helped them cope better with their stressful situation.²⁷

The relevant statutory provisions of the Länder prison legislation (*Justizvollzugsgesetze*/*Strafvollzugsgesetze*), i.e. the provisions of relevance for visits by children to their incarcerated parents, were examined for purposes of this analysis. In addition, a questionnaire was sent to the 16 Länder justice ministries, under whose authority all of the prisons (*JVA: Justizvollzugsanstalt*) fall, to

24 Federal Constitutional Court, ruling of 1 April 2008, 1 BvR 1620/04, guiding principle 2 and marginal note 71 f

25 German Bundestag (2011), Section 27.

26 Jones et al. (2013). See also, e.g., the findings from the parent-child project "Chance": Zwönitzer, et al (2013).

27 Jones et al. (2013)

collect information from them. The questionnaire contained open-ended and closed questions as to

- whether the Land's Government collects data on the number of children in their federal state who have a parent who is in prison,
- what possibilities are available in their federal state for children to visit prisoners, and
- whether there is material explicitly intended to provide information to children.²⁸

“If this is not inconsistent with the best interests of the child ...”

Persons confronted with the situation of the children of prisoners for the first time often ask whether it is even possible for interaction with an incarcerated person to be in a child's best interests. Isn't someone who serving a prison term “bad company” for a child? Here one must respond: the right to interaction with both parents is an explicit right of children. This human right, with its great emotional significance for children, exists even when a parent is in prison. As a matter of principle, this right cannot be restricted other than for reasons of the child's best interests – in the situation of incarceration or in any other situation. Thus, the fact of incarceration cannot be the grounds for restricting interaction, but possibly problematic (previous) behaviour towards the child on the part of the parent, for example, can be.

Incarceration in and of itself is not a reason to question the incarcerated person's abilities as a father or mother in general. This is reflected, for example, in the courses of action available when a person who has parental custody of a child is imprisoned. In Germany, parental custody is not terminated upon the longer-term incarceration of the parent: it is merely suspended (under § 1674(1) of the German Civil Code (BGB: *Bürgerliches Gesetzbuch*)) because the parent cannot in fact exercise that custody for that period of time. If another parent is also entitled to custody, that person usually exerci-

ses parental custody alone (temporarily) (BGB, § 1678(1), first half of the sentence). If switching to the exercise of sole custody of this kind is not possible, the prisoner continues to exercise parental custody. Alternatively, in the case of a longer term of imprisonment for instance, a guardian (*Vormund*) can be appointed. The only exception is endangerment of the child's well-being / welfare (*Kindeswohlgefährdung*; in accordance with § 1666 and § 1666(a) of the BGB): this does constitute grounds for the termination of parental custody rights, in line with the imperative of averting significant endangerment of the child.

Available data

One aim of the survey of the Länder justice ministries on which this report is based was to determine, for the first time, how many children in Germany are affected by parental incarceration.²⁹

The survey revealed that none of the Länder recorded this data in a systematic fashion. Only Bavaria, Bremen, Hesse and Schleswig-Holstein cited numbers, which are based on information collected during induction interviews conducted when prisoners first arrive at the prisons. The information is provided on a voluntary basis by the prisoners, who are not asked about the ages of their children,³⁰ meaning that some of the children counted may be adult children of prisoners.

Reliable data are necessary, however, in order to design statutory provisions and child-sensitive visit practices and conditions at prisons. The existing deficit in the availability of data should be addressed promptly.

Visit entitlements under Länder prison legislation

The National CRC Monitoring Mechanism examined the legal provisions pertaining to contact between children and incarcerated parents from

28 All Länder justice ministries, except that of Hamburg, responded to the questionnaire.

29 As of 31 Mar. 2016

30 For example, see Schleswig Holstein: State Parliament Schleswig-Holstein (2015), p. 2. Other than data of this kind, there are only estimates (Zwönitzer, et al (2013), p. 236).

the perspective of children's rights. The analysis of the Länder prison legislation³¹ revealed that the provisions in question relate to the amount of time during which imprisoned persons are initially entitled to have visits. This indicates that it is primarily the prisoners' needs that are being addressed in these provisions, not the needs and not at all the rights of the persons visiting (such as children or other family members).

Table 7 (left column, p. 9) indicates the minimal visit entitlement (in hours of visit time) of prisoners in each of the federal states. The table makes it clear that this legally defined minimum amount of time that a prisoner is entitled to spend with a visitor or visitors varies substantially among the Länder; ranging from one hour (in five federal states, including Bavaria and the Saarland) to four hours (in Brandenburg, Lower Saxony and Saxony).

However, from a children's rights perspective, having recognized the harmful effects of the incarceration of a parent on her or his children or child, a state has also a duty to act to counter those effects. Under article 3(1) of the UN Convention on the Rights of the Child, the best interests of the child should even be treated as a primary consideration in this context. In a second step, therefore, the analysis looked for provisions in the Länder prison legislation that relate explicitly to visiting periods for children (Table 7, right column). For instance, the number of hours by which the minimum monthly visit entitlement can be increased differ across the Länder. Eight federal states extend a prisoner's "standard visit time" (*Regelbesuchszeit*) when the prisoner is visited by his or her child (Berlin, Bremen, Mecklenburg-Vorpommern, North Rhine-Westphalia, Rhineland-Palatinate, Saxony-Anhalt, Schleswig-Holstein and Thuringia). Some federal states provide for two additional hours for those cases (e.g. Rhineland-Palatinate), others for one additional hour (Bremen, for example).



Problematic in this respect from the perspective of children's rights is the fact that this extension of the visit entitlement is anchored in the Länder prison legislation as a right of the prisoners. The child's own right to personal contact with her or his parent, which is enshrined in both the UN CRC and in Germany's Basic Law, finds no equivalent in this non-constitutional legislation. A turn towards a more children's rights-based perspective could have a great impact on practices in this area: if it were the child who had the visit entitlement, it would not be easy for a prison shorten it, as a disciplinary measure associated with misconduct on the part of the incarcerated parent, for instance.


Table 7 (right column, p. 9) also makes it apparent that the rules pertaining to visits by children differ in other respects across the Länder as well. For instance, some federal states draw a distinction between visiting children who are under the age of 14 and older children. In Saxony-Anhalt, Mecklenburg-Western Pomerania and Thuringia, the possibility of the extended visiting period only applies in the case of children under 14. Moreover, in Bremen and Thuringia the extension only applies if the child visiting is a prisoner's biological or adopted child. Last but not least, the provisions differ with respect to the margin of discretion granted to the decision-making authorities.³²

All in all, the number of hours that children of prisoners are entitled to spend visiting with their parent remains quite low – compared for instance with the amounts of time stipulated in the access arrangements for children aged 4 or above that are quite common in the context of divorce and parental separation (2–3 days over a weekend in each 14-day period). However, following the requirements from article 3 and 9 of the UN CRP would mean making it possible for each child to have an individual visit entitlement, unless there are other reasons not to do so that are grounded in the child's best interests or wellbeing/welfare.

31 The analysis did not include the Länder juvenile justice legislation.

32 There are "kann" (can), "soll" (should) or "muss" (must) provisions: In the Baden-Württemberg legislation, for example, the provision on "additional visits" (§ 19(3) JVollzGB III BW) is a "should" provision in, i.e. a weak obligation allowing for some degree of discretion. In general, the prison authorities are bound to act in accordance with the provision, but they can decide otherwise in atypical cases. When the provision contains the word "possible" or "potential," it is a "can" provision, which means the authority has complete discretion as to whether or not to act as the provision sets out, i.e. to grant the extension. Brandenburg's Prison Act is the only one to contain a "must" provision on additional visits and extended visits. I.e., under § 34(4) BbgJVollzG "[these visits] must be permitted." A "must" provision leaves the authority no discretion, the authority has a statutory duty to act as the legislation specifies.

Minimum visitation time per month	Land	Rules on rights to visits beyond the minimum visiting period in the Länder legislation on prisons and the execution of justice
 1 hour	Baden-Württemberg	Additional visits for social re-integration or for specific personal matters (§ 19(3) Baden-Württemberg Prison Code (Justizvollzugsgesetzbuch), JVollzGB III BW)
	Bavaria	Additional visits for social re-integration or for certain personal matters (Art. 27(2) Bavarian Prison Act, BayStVollzG)
	Hamburg	Additional visits for social re-integration or for specific personal matters (§ 26(2) Hamburg Prison Act, HmbStVollzG) Unsupervised extended visits to maintain partner contact or contacts of similar nature possible (§ 26(4) HmbStVollzG)
	Hesse	Additional visits for social re-integration or for specific personal / family matters (§ 34(2) Hesse Prison Act HstVollzG)
	Saarland	Special promotion of contact with children; additional visitations to maintain family contact possible (§ 26(2) Saarland Prison Act, SLStVollzG) Unsupervised extended visits to maintain family contact possible (§ 26(4) SLStVollzG)
 2 hours	Berlin	1 further hour for visits from minor children of inmates (§29(1)(2) Berlin Prison Act, StVollzG Bln) Additional visits for social re-integration or for specific personal matters (§ 29(3) StVollzG Bln) Unsupervised extended visits to maintain family contact possible (§ 29(4) SLStVollzG Bln)
	Bremen	1 further hour for visits from children under the age of 14 (§ 26(1)(2) Bremen Prison Act, StVollzG Brem) Additional visits for social re-integration or for specific personal matters (§ 26(3) Bremen Prison Act, JVollzGB Brem) Unsupervised extended visits to maintain family contact possible; supervised extended visits by children under the age of 14 (§ 26(4) StVollzG Brem)
	Mecklenburg-Western Pomerania	2 further hours for visits from children under the age of 14 (§ 26(1)(2) Mecklenburg-Western Pomerania Prison Act, StVollzG M-V) Additional visits for social re-integration or for specific personal matters (§ 26(3) StVollzG M-V) Unsupervised visits of longer duration to maintain family contact possible (§ 26(4) StVollzG M-V)
	North Rhine-Westphalia	2 further hours for visits from minor children of prisoners; family-appropriate interaction for the well-being of minor children; consideration of the needs of minor children when structuring possibilities for visiting (§ 19(2) North Rhine-Westphalia Prison Act, StVollzG NRW) Additional visits for social re-integration or for specific personal matters (§ 19(3) StVollzG NRW) Unsupervised extended visits to maintain family contact possible (§ 19(4) StVollzG NRW)
	Rhineland-Palatinate	2 further hours for visits by prisoners' children under the age of 18: These contacts are particularly promoted (§ 33(2) Rhineland-Palatinate Prison Act, JVollzG RP) Additional visits for social re-integration or for specific personal matters (§ 33(4) JVollzG RP) Unsupervised extended visits for social re-integration possible (§ 33(5) JVollzG RP)

 4 hours	Saxony-Anhalt	2 further hours for visits by children under the age of 14: these visits are particularly promoted (§ 33(2) Saxony-Anhalt Prison Code, JVollzGB LSA) Additional visits for social re-integration or for specific personal matters (§ 33(4) JVollzGB LSA) Unsupervised visits of longer duration for social re-integration possible (§ 33(5) JVollzGB LSA)
	Schleswig-Holstein	Further hour for visits by family members, 2 further hours for visits from prisoners' minor children (§ 42(2) Schleswig-Holstein State Prison Act, LStVollzG SH) Unsupervised extended visits to maintain family contact possible (§ 42(4) LStVollzG SH)
	Thuringia	2 further hours for contact with biological and adoptive children under the age of 14, special promotion of these contact (§ 34(2) Thuringia Prison Code, ThürJVollzGB) Additional visits for social re-integration or for specific personal matters (§ 34(4) ThürJVollzGB) Unsupervised extended visits for social re-integration possible (§ 34(5) ThürJVollzGB)
	Brandenburg	Additional visits for social re-integration or for specific personal matters (§ 34(3) Brandenburg Prison Act, BbgJVollzG) Unsupervised extended visits to maintain family contact (if prisoner is deemed fit for this) should be permitted (§ 34(4) BbgJVollzG)
	Lower Saxony	Additional visits to achieve purpose of incarceration or for specific personal matters; unsupervised extended visits of family members (§ 25(2) Lower Saxony Prison Act, NJVollzG) When determining the duration and frequency and times of visits, the general life conditions of the visitors should be among the factors considered, especially as pertains to families with minor children (§ 25(3) NJVollzG)
	Saxony	Statements or temporary releases that promote the maintenance of contact with family members or attachment figures can be applied to visitation time (§ 26(1)(3) Saxony Prison Act, SächsStVollzG) Additional visits for social re-integration or for specific personal matters (§ 26(3) SächsStVollzG) Unsupervised extended visits to maintain family contact are possible (§ 26(4) SächsStVollzG)

Source: Evaluation of Länder prison legislation

The justice ministries of some federal states reported that prisons in their states have family-friendly practices for visits of minor children that go beyond what the legal provisions call for. The Bavarian State Ministry of Justice, for example, reported that some prisons hold parent days. The Hesse ministry reported having additional options for visits by prisoners' minor children, such as family visits and extended visits, which could be approved on a case-by-case basis. In addition, there are family-centred events which family members and children of prisoners are invited to attend.³³

Visit settings

Prisoner visits normally take place in a specific setting, usually a room containing multiple tables, at which multiple prisoners can each receive their visitors at the same time. The tables in some prisons are fitted with dividers for security reasons. Physical contact is typically prohibited, and in a very small number of prisons communication is only possible through a partition separating the prisoner from visitors.³⁴ In addition, as a rule, no more than three persons are permitted to visit at one time.

33 Response from the State Ministries of Justice to the questionnaire from the German Institute for Human Rights (version May 2017).

34 Roggenthin (2012), p. 3.

Reports of actual experiences with prison visits include problems and questions like these: Who gets to go on the visit if the family has more than four members? Does the favourite cuddly toy have to be locked away in a cabinet at the security check point? Is it possible to get a toddler to stay on one's lap during an entire visit and, in some cases, keep the child from touching the parent sitting across the table?³⁵

The analysis of the Länder prison legislation did not yield any information as to whether visits take place in the same setting when the visitors are children. But this does not mean that written policies relating to children's visits (minimum standards, guidelines, or similar) are not set down elsewhere. The Länder justice ministries were therefore asked about such standards and about the settings they were familiar with. Some of the visit formats for children's visits to their incarcerated parents that they mentioned in their responses are listed below:³⁶

- Visits rooms for families (with play areas and many other features)
- Family recreational time (including outside the prison in some cases)
- Extended visits (in family apartments)
- Special visits with sports activities

In Hesse, the prisons can issue additional visit rules for prisoners with minor children on a case by case basis. Other federal states mentioned special visits areas where physical contact between children and prisoners is allowed (Bavaria), areas structured to be child-friendly, or family visits rooms equipped with toys (Berlin, Mecklenburg-Western Pomerania, Saarland).³⁷

In Saxony, a set of minimum standards for family friendly visits areas in prisons were drawn up during the reporting period.³⁸ Containing sections on spaces, furnishings, personnel and visit times, these standards have been adopted as binding standards for the Saxon penal system.

Good practice: Family sensitive penal system in Schleswig-Holstein

Schleswig-Holstein amended its Prison Act in the period under report, introducing provisions on the "family-sensitive" execution of penal sanctions. § 24(2) of the Schleswig-Holstein Prison Act (LStVollzG SH) now defines a concrete mandate for penal system with respect to the children of prisoners: the penal system should, in coordination with the youth services office, promote the maintenance of prisoners' relationships with their minor children and provide spaces suitable for visits and contacts.³⁹ According to Schleswig-Holstein's justice ministry, one of the federal state's six prisons now has a separate visits area for families and four spaces for extended visits, which are structured like small apartments, with a living room, children's room, kitchenette and shower/WC.⁴⁰

Roll of independent social service providers and civil society organisations

In addition to the prisons themselves, a number of independent social service providers (*freie Träger*), initiatives and civil society organisations seek to support continuing contacts between prisoners and their families, particularly with regard to children. They help structure children's visits with prisoners and offer programmes and activities that enable children who have an incarcerated parent to meet with other children in the same situation (holiday camps, regular play groups, etc.). These organisations play an important role in supplementing state activities, in the context of visits at prisons, for instance, and in compensating for the lack of active services on the part of public child and youth services. As a rule, they also mobilise additional volunteers who support prisoners and their family members.

35 Treffpunkt e. V. (2016)

36 Source: Responses from the State Ministries of Justice to the questionnaire from the German Institute for Human Rights (version May 2017)

37 Responses from the State Ministries of Justice to the questionnaire from the German Institute for Human Rights (version May 2017).

38 The content of the minimum standards is laid out in a Minor Inquiry submitted at the State Parliament of Saxony (Landtag Sachsen, 2016)

39 Prison Act of the Land of Schleswig-Holstein (LStVollzG SH) of 21 July 2016

40 Responses from the State Ministries of Justice to the questionnaire from the German Institute for Human Rights (version May 2017).

It goes without saying that the state should not use these services as a way to limit its own activities with respect to implementation of the UN CRC requirements. However, the support for prisoners and family members that the independent social service providers and civil society organisations provide is extraordinarily important and will remain so even when all legal requirements are fully implemented; their engagement, which is aimed directly at the maintenance of relationships between prisoners and their family members, is vital.

Religious counsellors⁴¹ and the Bundesarbeitsgemeinschaft Straffälligenhilfe e. V. (BAG-S e. V.: National Alliance for the Care and Resettlement of Offenders)⁴² regularly draw up recommendations for family- and child-sensitive policies in the penal system. They have long been calling for greater consideration of prisoners' family members, especially the children, within the penal system.⁴³ The efforts of these groups notwithstanding, the lack of state funding that would make it possible to network the existing non-governmental organisations and individuals at the national level is still felt. A network of this kind would allow the pooling of experience and the development of projects worth replicating – and thus make a collective effort on behalf of the rights of the children of prisoners possible.⁴⁴

At the European level, the EUROCHIPS network was set up in 2000 – the name was changed to Children of Prisoners Europe (COPE) in 2013 – to give a voice to children of prisoners, promote professional discourse on the specific situation of these children and to train and advise professionals and political decisionmakers. In May of 2017, COPE launched a campaign entitled “Not

my crime, still my sentence”⁴⁵ which focuses on improving prison visits for children.⁴⁶

4 Information for children

It goes without saying that a child whose parent has been incarcerated should be informed about the whereabouts of her or his imprisoned parent. The obligation to do so arises, inter alia, from article 9(4) of the UN CRC,⁴⁷ which states that in the case of detention or imprisonment, the State Party has a duty to provide information concerning the whereabouts of the imprisoned family member upon request. It follows that children should be informed about what incarceration involves in a manner appropriate to their age and maturity.

In Germany, information as to the whereabouts of imprisoned or detained persons is always provided. The Länder justice ministers were asked about informational material or informational offerings specifically designed for the children of prisoners. This question referred both to information for children about support offerings and visiting opportunities and to child-appropriate information about what the inside of a prison looks like, what rules apply in prisons, who goes in and out of a prison and why there are security checks upon entry.

Several federal states reported having general informational materials intended for prisoners and their family members. Six of them (Hesse, North Rhine-Westphalia, Rhineland-Palatinate, Saxony, Saxony-Anhalt, Schleswig-Holstein) cited informational materials designed especially for children that are recommended to children concerned. These included materials prepared by third

41 Evangelical Conference for Prison Counselling in Germany (2014)

42 Bundesarbeitsgemeinschaft für Straffälligenhilfe (2012)

43 Roggenthin (2016), p. 170

44 Hopes have been raised in the past in this respect, both in connection with the parent-child project “Chance” out of Baden-Württemberg as well as with Takt e. V., a project that grew out of the COPING project. However, it wasn't possible to secure commitments for infrastructural funding for coordination of networking between existing programmes in either of the projects.

45 Translated in German publications as “unschuldig mitgestraft”.

46 For more information see: <http://childrenofprisoners.eu>

47 This duty is also anchored in Article 18(1)(d) of the International Convention for the Protection of All Persons from Enforced Disappearance.

parties, such as the parent-child project Chance in Baden-Württemberg (these materials take the form of flyers and informational brochures)⁴⁸ and internet sites, such as the online advising site operated by Caritas⁴⁹. Some of the justice ministries referred to materials that they themselves or the individual prisons had developed. The box on this page lists some of the types of informational materials that are available for children of prisoners.⁵⁰

Examples:

Informational materials for children⁵¹

- brochures / flyers
- film⁵²
- books with photos of the individual prisons⁵³
- posters⁵⁴
- websites
- reference to external websites

5 Awareness raising / sensitization of frontline professionals

Apart from the provision of information to children, another focus is on increasing the awareness of these issues among persons who interact with the children of prisoners in their professions, such as the prison officers who receive visiting children in the entrance area of a prison, but also pre-school educators in childcare centres and teachers in schools. The fact that public child and youth services are not assigned responsibility for the families involved as a general practise is often criticised by those active in projects and initiatives in this area. Often not aware that children of prisoners need support or unaware of their specific needs, the public child and youth services do not deliver services to these children.⁵⁵

All of these professionals who interact with the children of prisoners should be informed about the rights of children – about the change of perspective that children's rights demand should be implemented in their professional practice. The guidelines for dealing with the children of prisoners developed in a participative process by Treffpunkt e. V.⁵⁶ are an example of a good resource in this respect, they contain professional training units for penal officials, teachers and child and youth services professionals.⁵⁷

48 Chance (with a focus on children's rights) offered families free support during the period of the parent's imprisonment and in the re-socialisation phase. The project, sponsored by the Baden-Württemberg-Stiftung, ran from 2011 to 2016. See: <http://www.projekt-chance.de/?eltern-kind-projekt-chance,46> (accessed on 13 Oct. 2017)

49 Here, children can find out what the inside of a prison looks like, see what how a typical day in prison is structured, find out the rules for visiting, and what kind of support programmes are available. Particularly worth highlighting here are the brief explanatory videos which show child reporters interviewing the directors of detention facilities or members of the fathers' group in a prison, for example: www.besuch-im-gefaengnis.de (accessed on 13 Oct. 2017).

50 Responses from the State Ministries of Justice to the questionnaire from the German Institute for Human Rights (version May 2017).

51 Source: Responses from the State Ministries of Justice to the questionnaire from the German Institute for Human Rights (version May 2017).

52 For example, the explanatory film from Caritas "What is it like to visit someone in prison?": <http://besuch-im-gefaengnis.de/poster/jemanden-imgefaengnis-besuchen#wenn-du-deine-eltern-im-gef%3%A4ngnis-besuchen-m%3%B6chtest> (accessed on 16 Nov. 2017).

53 A list of "recommended reading for children of prisoners" is available here, for example: Bundesarbeitsgemeinschaft für Straffälligenhilfe (2012).

54 For example, the poster "My visit to prison," published here by Freiräume – Diakonie for Bielefeld GgmbH: <http://bag-s.de/nc/aktuelles/aktuelles0/article/plakat-erklart-kindern-personenkontrolle/> (accessed on 17 Oct. 2017).

55 Sauermann (2016)

56 Entitled 'Wir sind nicht Schuld'. Leitfaden zum Umgang mit Kindern von Inhaftierten

57 Treffpunkt e. V. (2016)

Conclusion

The incarceration of a parent is associated with enormous disruption in the daily lives of children. The children of prisoners are at an elevated risk of developing mental health problems compared to other children in their age groups. The abrupt separation means that their daily routines must be restructured and the relationships within the family realigned. Studies have shown that regular contact between a child and her or his incarcerated parent is very important for the child's well-being. That is not all though: the UN Convention on the Rights of the Child lays down the child's right to direct contact with an incarcerated parent (article 9) and provides that the best interests of the child must be a primary consideration when the state intervenes in the relationship between a parent and a child, as it is doing when it incarcerates a parent (article 3). The Convention has binding force for the Länder as well as for the Federation.⁵⁸

In light of all of this, the National CRC Monitoring Mechanism investigated the extent to which the regulatory practice in the federal states takes the interests of the children of incarcerated persons into consideration. To this end, the prison legislation of all of the Länder was analysed and the Länder justice ministries were surveyed.

The investigation revealed an absence of reliable data on the number of children affected; that the minimum monthly visit times laid down in the legislation are very short from the perspective of the children concerned; that there are few child-friendly visiting areas in the prisons; and that little informational material exists for children or front-line professionals (prison officers, teachers and pre-school educators). In the prisons themselves, one finds many different examples of good practice, engagement and ideas that could be used to improve the extent to which the interests of children are taken into consideration at other prisons as well.

The introduction of the systematic collection of data on the numbers of children in Germany affected by parental incarceration is one of the steps necessary in order bring penal systems in Germany up to the requirements of the UN Convention on the Rights of the Child. From a child's rights perspective, the collection of such data would represent an important basis which could support policy planning for possible support services. In addition, following Schleswig Holstein's example, the Länder should clearly express the child's own right to personal contact with both their parents and the need to give due weight to the best interest of the child in structuring visiting conditions in their prison legislation or subordinate regulations.

Public child and youth services should identify children of incarcerated parents as a target group, tailor support services to meet their specific needs and actively bring those services to the children affected. What is more, the age and maturity of the children should be taken into account when structuring penal system practices associated with the granting of visit rights, the creation of possibilities for visits to take place in appropriate settings, the provision of information to children, etc. Attention should be paid in this context to the national dissemination of information about good experiences from the federal states, of individual prisons, and from other countries, and also to the provision and dissemination of child-sensitive materials and services.⁵⁹

Finally, the views of the children concerned should be taken into account when measures are being planned, in accordance with the requirements arising from article 12 of the UN Convention on the Rights of the Child. Children should have the opportunity to exchange opinions among themselves, to meet up and, if they wish, to formulate their own positions and proposals for a better realisation of their rights.

58 Cremer (2012).

59 Here several examples: poster showing the security check for prison visitors from BAG-S: <http://www.bag-s.de/aktuelles/aktuelles0/article/plakat-erklart-kindern-personenkontrolle/>; website Juki-online.de from Treffpunkt e.V: <https://juki-online.de/startseite.html>; website operated by the German Caritas Association: <http://besuch-im-gefaengnis.de/>; online advising site operated by the German Caritas Association: <https://www.caritas.de/hilfeundberatung/onlineberatung/kinderjugendelternfamilie>

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Imprint

PUBLISHER

German Institute for Human Rights
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The entire full-length report (German) is available at: <http://www.institut-fuer-menschenrechte.de/publikationen/show/entwicklung-der-menschenrechtssituation-in-deutschland-juli-2016-juni-2017/>

An executive summary of the report is also available in English: <http://www.institut-fuer-menschenrechte.de/en/human-rights-report/human-rights-report-2017/>

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